

Decision Summary RA23004

This document summarizes my reasons for issuing Approval RA23004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23004. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 30, 2023, Jonathan Stahl, on behalf of the Hutterian Brethren Church of Valley View (Valley View Colony), submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The initial Part 2 application was submitted on April 17, 2023, but was not complete at that time. I received the remaining relevant and necessary information for the Part 2 application on June 27, 2023. On July 5, 2023, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 82 to 122 dairy cows (plus associated dries and replacements)
- Increasing livestock numbers from 7,500 to 15,000 chicken layers
- Constructing a new dairy barn (95.7 m x 21.95 m)
- Constructing a new calf barn (30.2 m x 13.7 m)
- Constructing a new layer barn with attached manure storage facility (51.5 m x 33.84 m)
- Constructing a new synthetically lined liquid manure storage (120 m x 80 m x 4.5 m)
- Decommissioning the existing dairy barn, existing calf barn, existing layer barn, and existing concrete liquid manure storage facility

The application also notified the NRCB of the proposed construction of a milk service building (12.8 m x 21.95 m), a livestock feed kitchen (30.73 m x 14.02 m), and a layer office/service building (33.84 m x 17.22 m). These facilities are “ancillary structures,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not need to be permitted under the act.

a. Location

The existing CFO is located at N½ 9-32-26-W4M and S½ 16-32-26 W4M in Kneehill County, roughly 6 kilometers south west of Torrington, Alberta. The terrain is generally flat, with a general slope to the east. An intermittent creek exists approximately 1.1 km east of the proposed facilities.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA10031A. That permit allowed the construction and operation of a multi species CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA23004.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Kneehill County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Three Hills Capital on July 5, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Twenty-six notification letters were sent to people identified by Kneehill County as owning or residing on land within the affected party radius.

The site is not located within 100 m of a bank of a river, stream or canal; therefore no additional notification was required.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation & Economic Corridors (TEC).

I also emailed a copy of the application to Ember Resources Inc. and Cross Roads Gas Co-op Ltd as right of way holders.

AGI responded to provide the name and contact information for the inspector assigned to this application. They did not provide any additional comments.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

There is no ALSA regional plan for the area where the existing CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Kneehill County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11 the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around a water well setback is discussed in part 9 and Appendix B of this decision summary.

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Kneehill County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Barb Hazelton, manager of planning and development with Kneehill County, provided a written response. Ms. Hazelton stated that the application is consistent with Kneehill County's land use provisions of the municipal development plan. The application's consistency with Kneehill County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." No responses were received from any other person, organization, or member of the

public.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Valley View Colony's existing beef feedlot and catch basin were assessed in 2013 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the feedlot facilities is not required.

The feedlot facilities appear to be the CFO's highest risk facilities, as they are the only outdoor facilities that will remain after this application. The existing hog concrete liquid manure facility is proposed to be decommissioned, and replaced with the new synthetically lined liquid manure storage facility.

Because the feedlot and catch basin are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

9. Exemptions

I determined that the proposed dairy barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well setback is warranted due to construction and location upslope from the dairy barn.

10. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Hazelton also listed the setbacks required by Kneehill County's land use bylaw (LUB). The application meets these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this application. Furthermore, the application meets AOPAs technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://eab.gov.ab.ca/status.htm>, accessed August 11, 2023).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from Kneehill County, and my own observations from a site visit.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval RA23004 specifies the cumulative permitted livestock capacity as:

- 122 milking cows (plus associated dries and replacements)
- 15,000 chicken layers
- 2000 beef finishers
- 7200 nursery to finisher hogs
- 1200 chicken broilers
- 1200 ducks
- 400 geese
- 300 turkeys

and permits the construction of the dairy barn, calf barn, layer barn, synthetically lined liquid manure storage and the ancillary facilities listed.

Approval RA23004 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval RA23004 includes conditions that generally address construction deadlines, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated Approval RA10031A with Approval RA23004 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

12. Conclusion

Approval RA23004 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23004.

Valley View Colony's NRCB issued Approval RA10031A is therefore superseded, and its content consolidated into this Approval RA23004, unless Approval RA23004 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA10031A will remain in effect.

August 22, 2023

(Original signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval RA23004

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Valley View Colony’s CFO is located in Kneehill County and is therefore subject to that county’s MDP. Kneehill County adopted the latest revision to this plan on February 23, 2021, under Bylaw #1829.

As relevant here:

Policy 11 of the MDP under Agriculture, states that “no new or expansions of existing confined feeding operations (CFOs) will be allowed in the following areas:

- (i) In hazard lands or environmentally sensitive lands as defined by the province and the 2010 Summit Report,
- (ii) Within 1.6 kilometres (1 mile) of any hamlet or grouped Country Residential development, or
- (iii) Within 1.6 kilometres (1 mile) of an urban fringe area or an Inter-municipal Development Plan boundary

Valley View Colony’s application is not located within any of these setbacks or exclusion zones.

For these reasons, I conclude that the application is consistent with the land use provisions of Kneehill County’s MDP.

APPENDIX B: Exemption from water well setbacks

1. Water Well Considerations

The proposed dairy barn is to be located less than 100 m from a water well. I have confirmed that one water well is located approximately 45 m from it during a site visit. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)* under AOPA.

Section 7(2), however, allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant's proposed MSF/MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 45 m W of the dairy barn is likely EPA water well ID #169776. This well is reported to have been installed in 1992 and has a perforated or screened zone from 42.67 m to 91.44 m below ground level across stratigraphy. The well has an above ground casing. This well is used for non-domestic purposes. The well's log identifies protective layer or layers from ground surface to 13.11 m below ground level. The well has a driven seal from ground surface to 35.05 m below ground level. The well appeared to be in good condition at the time of my site inspection. The well is up-gradient of the CFO and MSF.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.¹

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA23004.

Under the regulation, an approval officer may require a groundwater monitoring program of the water well in question. In my view, given meeting AOPA technical requirements and upslope nature of the well, monitoring is not required.

APPENDIX C: Explanation of conditions in Approval RA23004

Approval RA23004 includes several conditions, discussed below, and carries forward all of the conditions from RA10031A.

1. New conditions in Approval RA23004

a. Construction above the water table

Section 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on the information provided, the proposed dairy barn and liquid manure storage facility meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring Valley View Colony to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

Valley View Colony proposes to complete construction of the new facilities by December 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026 is included as a condition in Approval RA23004.

c. Post-construction inspection and review

The NRCB’s general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval RA23004 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn to meet the specification for category B (liquid manure shallow pits) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” The liners in the calf barn and in the layer barn are required to meet the specifications for category D (solid manure – dry) in the same guideline;
- b. Valley View Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn, calf barn, and layer barn; and
- c. a construction completion report, certifying that the manure collection portions of the new synthetic lined liquid manure storage facility were constructed as per their application and the manufacturer’s requirements.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval RA23004 includes conditions stating that Valley View Colony shall not place livestock or manure in the manure storage or collection portions of the new dairy barn, calf barn, or layer barn, nor manure in the liquid manure storage facility until NRCB

personnel have inspected the new facilities and confirmed in writing that they meet the approval requirements.

d. Decommissioning

Valley View Colony has proposed to decommission the existing layer barn, dairy barn, calf barn, and concrete liquid manure storage facility. A condition will be added to Approval RA23004 to reflect this.

2. Conditions carried forward from RA10031A

All existing conditions in RA10031A will be carried forward.